



State of Washington
DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services

**SIGNIFICANT AMENDMENTS TO THE MORTGAGE BROKER PRACTICES ACT
AND THE PROPOSED RULES ON RESPONSIBILITY, LIABILITY AND EXAMINATIONS**

Significant Amendments to the MBPA

1. Loan originator licensing has been established:
 - Defines “loan originator.”
 - Loan originators must pass a written test and attend continuing education.
 - Background checks similar to owners and designated brokers.
 - No felonies of any kind and no gross misdemeanors of a financial nature, within 7 years.
 - No separate bonding for loan originators. Mortgage broker bond will cover.
 - Licenses will cost \$125 per year.
 - LOs may work for more than one mortgage broker provided they have registered with DFI. There will be a separate charge of \$75 for LOs adding additional mortgage brokers.
 - Information must be registered when and LO transfers to a different mortgage broker or leaves the industry. Both companies and loan originators will be responsible for accurate notices to DFI and any unlicensed LO conduct.
 - A LO may hold an inactive license when leaving the industry or transferring to an exempt mortgage broker. Inactive LOs must pay annual fees and maintain continuing education.
2. Requires a designated broker and establishes the appropriate level of responsibility. See Proposed Designated Broker Responsibilities handout.
3. Changes licenses from non-expiring to expiring and licensing fees from paying for the past year to paying forward each year.
4. Examination authority expanded from “during the first two years” to “during the first five years” of licensing. DFI can accept outside audits or examinations in lieu of conducting an examination, and can hire accountants, attorneys, etc. to assist in examinations or investigations. See Proposed Examination Authorities handout.
5. The intentional withholding or destruction of examination or investigation records is a Class B felony.
6. Mortgage Brokers will be required to file annual reports of origination activity for tracking purposes.

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PROPOSED DESIGNATED BROKER AND OWNER RESPONSIBILITIES

As a licensed mortgage broker, am I responsible for the actions of my employees and independent contractors?

Yes. You are responsible for any conduct violating the act or these rules by any person you employ, or engage as an independent contractor, to work in the business covered by your license.

Who at the licensed mortgage broker company is responsible for the licensee's compliance with the act and these rules?

The designated broker, principals, and owners with supervisory authority are responsible for the licensee's compliance with the act and these rules. [Note: "the act and these rules" includes all applicable federal regulations.]

Under what circumstances will the department hold a designated broker, principal, or owner who has supervisory authority responsible for the actions of others that violate the act?

A designated broker, principal, or owner with supervisory authority is responsible for any conduct violating the act by a licensee, employee, or independent contractor if they:

- (1) direct or instruct the conduct that was in violation of the act, or have knowledge of the specific conduct, and approve or allow the conduct; or
- (2) know, or by the exercise of reasonable care and inquiry should have known of the conduct in time to prevent it, or minimize the consequences, and did not.

When conduct violating the act has occurred, what may the department consider when assessing the responsibility of the designated broker, principal, and owner with supervisory authority?

The department may consider the following in an effort to determine who is responsible when a violation of the act has occurred. The following list is not limiting or exhaustive of the elements the department may consider:

- (1) The adequacy of any background and experience investigation conducted prior to hiring or contracting with any person;
- (2) The adoption of policies and procedures for:
 - (a) supervision and training
 - (b) regularly reviewing work performed
 - (c) training in the requirements of the act and rules
 - (d) monitoring continuing education requirements and compliance under the act
 - (e) acting on reports of alleged misconduct;
- (3) Adopting a system of review for implementation and compliance with the policies and procedures;
- (4) Providing copies of the act and rules; and
- (5) The frequency and completeness of review conducted on work performed by any person subject to the act.

What is an examination?

“Examination” or “Compliance examination” means the examination performed by the division to determine whether the licensee is in compliance with applicable laws and regulations.

Will the department actually visit my business and review my books and records?

Yes. If you or your branches are chosen for an examination the department’s examiners will physically visit your offices and review loan files, trust account records and other business records for compliance with the law and rules.

When may the department examine my business?

The department may examine your business if you have obtained a mortgage broker main or branch office license within the last five years. The department may investigate your business at any time.

How many times may the department examine my business in a five year period?

Your business may be examined once during the first five years of licensing. This applies to the main office and each branch office. However, if violations are found during an examination, the department may conduct additional examinations to follow-up with the correction of these violations. The time frame of any additional examination will depend, in part, on the department’s assessment of the continuing risk associated with the violations found during the previous examination.

Will the department give me advance notice of an examination?

- (1) The department will give you advance notice of at least thirty days of a routine examination to allow you to compile the requested documents and prepare for the examiner’s arrival. However, you and the department may agree on an earlier date for the examination. Extensions of time beyond that are at the director’s discretion.
- (2) The department will not give you advance notice for “for cause” examinations. “For cause” means the department may have reason to believe you have violated this chapter.

What is the process for an examination of my business?

The examination process is detailed in the department’s Mortgage Broker Examination Manual. The manual is available on the department’s web site. The basic process includes, but is not limited to:

- (1) **Advance notice.** You will receive a department notice listing the documents the department will examine at your business. Your preparation before the arrival of the department examiners will help the examination proceed more efficiently. The department will make every effort to minimize the impact of the examination on your business.
- (2) **A pre-examination meeting at your business.** The department examiner(s) will meet with you upon arrival at your business location.
- (3) **The on-site review at your business.** The department examiner will conduct the examination of your business.
- (4) **An exit meeting before the examiner(s) leave.** The department examiner(s) will meet with you to discuss the preliminary examination findings.
- (5) **A possible resolution of examination findings.** You may have an opportunity to resolve the examination findings.
- (6) **A possible referral to enforcement.** You may be referred for an enforcement action if you fail to resolve the findings, or if the violation(s) involves fraud, dishonesty, or systematic violations that present harm to the public. An enforcement action may result in a suspension or revocation of your license, the payment of monetary penalties, or a ban from the mortgage broker industry.

What is the scope of the examination of my business?

In general, the scope of the examination will include, but is not limited to:

- (1) Reviewing trust accounting compliance.
- (2) Reviewing loan files.
- (3) Conducting interviews to better understand the business, solicitation practices, transactional events, disclosure compliance, and complaint resolution.
- (4) Reviewing the business books and records, including employee records.

When would the Department expand the scope of an examination of my business?

If during an examination the department finds a clear need to expand the scope of the examination, it may do so.

Two examples of a clear need to expand the scope of an examination are:

- (1) When the department finds an apparent violation of trust accounting.
- (2) When apparent violations of the prohibited practices section of the act are discovered. See RCW 19.146.0201 for prohibited practices.

These examples are illustrative only and do not limit the circumstances under which the department may decide to expand the scope of an examination.

Will I have to pay for an examination of my business?

- (1) If you are located in Washington, you do not have to pay for the costs of the examination.
- (2) If you are located outside of Washington, you will have to pay for the examiner's travel costs. Travel costs include, but are not limited to, transportation costs, meals, and lodging. Travel costs are determined by the State of Washington, Office of Financial Management.

May the department use reports from professionals or specialists, or both, instead of conducting their own examination of a mortgage broker business?

Yes. Instead of examining a mortgage broker's business, the department may consider the reports of independent certified professionals who have examined the mortgage broker using the same standards used by the department (see the standards in the department's Mortgage Broker Examination Manual). The department may then prepare a report of examination that incorporates all or part of the independent reports, or the examiner may expand the scope of the examination.

What are the pros and cons of hiring my own certified professional versus waiting for a department examination?

The department's cost of examination will not be charged to you directly, although you may experience some minor business interruption. If you hire your own certified professional you will incur the cost of that examination, however, you will control the time and manner in which the examination is conducted. The greatest benefits you may derive from hiring your own certified professional are:

- (1) Early notice of problems you may encounter during an examination;
- (2) The ability to correct deficiencies or problems at an early stage when the greatest benefit of correction may be derived;
- (3) The early implementation of a sound compliance program; and
- (4) The ability to control the timing for your convenience.

How may the department determine if the certified professional's report meets the standards of examination established by the department?

The department will compare the sufficiency of the report submitted by the certified professional to the requirements in the department's examination manual. If the professional's report is missing any of the requirements from the manual, the department may require the licensee to provide the missing information.

Must I do anything as a result of the examination?

Yes. You will receive instructions from the department on the actions you must take. For example, if adverse findings or deficiencies were cited in the Report of Examination, you must respond to those findings.